

CHAPTER VI PUBLIC WAYS AND PROPERTY

ARTICLE I - MUNICIPAL PROPERTY

SECTION 6-101: DEFINITIONS

The following definitions shall be applied throughout this chapter. When no definition is specified, the normal dictionary usage of the word shall apply.

The term "sidewalk space," as used herein, shall mean that portion of a street between curb lines and adjacent property lines.

SECTION 6-102: MAINTENANCE AND CONTROL

The City Council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the City, and shall cause the same to be kept open, in repair and free from nuisances. (Ref. Neb. Rev. Stat. §16-201)

SECTION 6-103: OBSTRUCTIONS

Trees and shrubs growing upon public property may be removed or trimmed at any time by the City. Trees and shrubs growing on private property which overhang public property may be trimmed by the City to remove such overhanging growth. Such trimming operation shall not give rise to a cause of action against the City for damage to the affected tree or shrub. It shall be unlawful for any person, firm or corporation to obstruct or encumber any of the streets, alleys or sidewalks of the City by fences, gates, buildings, structures or otherwise. (Ref. Neb. Rev. Stat. §16-207)

SECTION 6-104: REMOVAL OF OBSTRUCTIONS NEAR UTILITIES

The City or any public utility affected may cause the trimming or removal of any tree or shrub growing on or over any public right-of-way so close as to interfere with the maintenance of any utility wires or pipes. Whenever possible, notice of the intention of such removal shall be given to the owner or occupant prior to trimming or removal.

SECTION 6-105 PERMITTED OBSTRUCTIONS

Persons engaged in the erection, construction, reconstruction, wrecking or repair of any building, or the construction or repair of a sidewalk along any street, may occupy the public street space with such building material and equipment as long as necessary if such persons shall make application to and receive a permit in writing from the Public Works Director or his/her designee to do so; provided, no permit for the occupancy of the sidewalk space, and more than 1/3 of the road-

way of the public space adjacent to the real estate on which said building is to be constructed, erected, reconstructed, wrecked or repaired shall be granted; and provided further, a suitable passageway for pedestrians shall be maintained within the public space included in the permit, which space shall be protected and lighted in the manner required by the street and property maintenance superintendent.

SECTION 6-106: COUNCIL APPROVAL FOR IMPROVEMENTS, PARKING

The City Council may, by resolution or ordinance, order or permit the use of any area which is part of the city right-of-way for parking or improvements by an adjoining owner when, in the judgment of the City Council, such portion of any street right-of-way shall not be necessarily required for actual travel. The City Council may, at the adoption of such ordinance or resolution, impose conditions of approval and limit the period of such approved use. In any event, any such approved use shall require an annual renewal thereof by application to the office of the city clerk, but renewal shall not require City Council approval unless otherwise described in the grant or permit or by other City Council action.

SECTION 6-107: UNLAWFUL STORAGE OR BUSINESS USE

It shall be unlawful for any person to use any public property for storage or business purposes of any kind or nature except as may be specifically permitted by any other section in this Code.

SECTION 6-108 SALE AND CONVEYANCE

Real estate now owned or hereafter owned by the City may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, such property shall be conveyed strictly in accordance with the conditions of Neb. Rev. Stat. §18-1001 to 18-1006. (Ref. Neb. Rev. Stat. §16-202)

The power to sell and convey any real estate owned by the City, including land used for park purposes and public squares, except real property used in the operation of public utilities or real estate for state armory sites for the use of the State of Nebraska as provided in Neb. Rev. Stat. §16-201, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof.

Notice of such sale and the terms thereof shall be published for three consecutive weeks in a legal newspaper published in or of general circulation in the City immediately after the passage and publication of such ordinance.

If within 30 days after the passage and publication of such ordinance, a remonstrance against such sale, signed by registered voters of the City equal in num-

ber to 30% of the registered voters of the City voting at the last regular city election held therein, is filed with the City Council, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday or legal holiday, the signatures shall be collected within the 30 day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

Upon receipt of the remonstrance, the City Council, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the remonstrance. The City Council shall deliver the remonstrance to the election commissioner or county clerk by hand carrier, by use of law enforcement officials or by certified mail, return receipt requested. Upon the receipt of the remonstrance, the election commissioner or county clerk shall issue to the City Council a written receipt that the remonstrance is in his/her custody.

The election commissioner or county clerk shall compare the signature of each person signing the remonstrance with the voter registration records to determine if each signer was a registered voter on or before the date on which the remonstrance was filed with the City Council. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and municipal or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, municipal or post office address matches the registration records and that the registration was received on or before the date on which the remonstrance was filed with the City Council. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the City Council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the remonstrance, the sufficiency of the remonstrance, and the qualifications of the signer, shall be to prevent fraud, deception and misrepresentation in the remonstrance process.

Upon the completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his/her signature more than once to the remonstrance and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate

signature and shall count only the earliest date signature.

The election commissioner or county clerk shall certify to the City Council the number of valid signatures necessary to constitute a valid remonstrance. The election commissioner or county clerk shall deliver the remonstrance and the certifications to the City Council within 40 days after the receipt of the remonstrance from the City Council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. No more than 20 signatures on one signature page shall be counted.

The City Council shall, within 30 days after the receipt of the remonstrance and certifications from the election commissioner or county clerk, hold a public hearing to review the remonstrance and certifications and receive testimony regarding them. The City Council shall, following the hearing, vote on whether or not the remonstrance is valid and shall uphold the remonstrance if sufficient valid signatures have been received.

SECTION 6-109: ACQUISITION OF PROPERTY; APPRAISAL

The City shall not purchase, lease-purchase, or acquire for consideration real property having an estimated value of \$100,000.00 or more unless an appraisal of such property has been performed by a certified real estate appraiser. (Ref. Neb. Rev. Stat. §13-403)

SECTION 6-110: ACQUISITION OF REAL PROPERTY

When acquiring an interest in real property by purchase or eminent domain, the City shall do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing. (Ref. Neb. Rev. Stat. §18-1755)

SECTION 6-111: DESTRUCTION OR DAMAGE TO PROPERTY

It shall be unlawful for any person to intentionally cause damage to any property owned or under the jurisdiction of the City, or for any person to cause the destruction or injury to sidewalk space or any improvement placed thereon by an adjoining owner by driving any vehicle over the curb and onto such area or in any other manner.

ARTICLE II - SIDEWALKS

SECTION 6-201 OVERHANGING BRANCHES

The owner or occupant of any lot, piece or parcel of ground abutting or adjacent to any street or sidewalk over which tree branches or limbs extend shall at all times keep such branches or limbs trimmed to the height of at least seven and one-half feet above the surface of said walk. Whenever the limbs or branches of any tree extend over sidewalks contrary to the provisions herein so as to interfere with the lighting of the street from street lights, or with the convenience of the public using said sidewalk, the City Council at any regular or special meeting may pass a resolution ordering the owner or occupant to cut or remove said obstructions within five days after having received a copy of the resolution. Such resolution shall state that the City will remove said branches and charge the costs thereof to the owner or occupant as a special assessment for improvements as herein provided, if said resolution is not complied with. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send to the last known address of the nonresident property owner by means of certified mail, return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

SECTION 6-202 KEPT CLEAN; NOTICE

It shall be unlawful for the occupant of any lot or lots or the owner of any vacant lot or lots within the corporate limits to permit any snow, sleet, ice, mud or other substance to remain upon the sidewalks. All sidewalks within the business district shall be cleaned within five hours after the cessation of a storm, unless the storm or fall of snow shall have taken place during the night, in which case the sidewalk shall be cleaned before 8:00 A.M. the following day. Sidewalks within the residential areas of the City shall be cleaned within 12 hours after the cessation of the storm.

Notice to remove snow, sleet, mud, ice or other substance shall be made upon the owner of the premises, said notice to demand the removal of said substance forthwith. If the person owning such premises is unknown or cannot be found, or if any reasonable service cannot be made upon any such owner, agent or occupant within the City, then such service of said notice shall be made by posting a copy thereof in some conspicuous place on the premises; and in case the owner or occupant shall fail to remove the snow, sleet, mud, ice or other substance, then it shall be the duty of the Public Works Director or his/her designee to remove such substance and the expense thereof shall be charged against the property and the owner thereof, and may be recovered by proper action in the name of the City or be chargeable against the property as a special assessment for improvements. (Ref. Neb. Rev. Stat. §16-207, 16-663)

SECTION 6-203: MAINTENANCE

Every owner of any lot, lots or piece of land within the corporate limits shall at all times keep and maintain the sidewalk along and contiguous to said lot, lots or pieces of land, as the case may be, in good and proper repair and in a condition reasonably safe for all travelers thereon. In the event that the owner or owners of any lot, lots or lands, abutting on any street, avenue or part thereof shall fail to construct or repair any sidewalk in front of his/her/their lot, lots or lands, within the time and in the manner as directed and required herein after having received due notice to do so, said owner shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalks or lack thereof, and the City Council shall have power to cause any such sidewalks to be constructed or repaired and assess the costs thereof against such property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send to the last known address of the nonresident property owner by means of certified mail, return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Ref. Neb. Rev. Stat. §16-661, 16-662)

SECTION 6-204: REPAIR

The City Council may require sidewalks of the City to be repaired. Notice to the owners of property upon which such sidewalks in disrepair are located shall require said owners to repair said sidewalks within 30 days after issuance of said notice. Upon receiving notice, the owner of the property adjacent to the sidewalk in disrepair shall immediately put up barricades and warning lights by night and after receiving notice to repair the sidewalk shall forthwith contract with a competent contractor to repair the sidewalk within the time specified herein. No special assessment shall be levied against the property unless said owner shall neglect or refuse to repair within the time prescribed; and in the event that such owner fails to repair, the City shall cause the repairs to be made and assess the property owner the expense of such repairs. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send to the last known address of the nonresident property owner by means of certified mail, return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Ref. Neb. Rev. Stat. §16-661, 16-662)

SECTION 6-205: CONSTRUCTION BY OWNER

Any person desiring to construct, causing to be constructed or required by a building permit of the City to construct any sidewalk, shall do so only as herein

provided. It shall be unlawful for any person to construct any sidewalk without first having obtained a permit.

Said owner shall make application in writing for a permit and file such application in the office of the city clerk. The permit fee, which shall be set by resolution of the City Council and on file at the office of the city clerk, shall be paid to the city treasurer. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. The building inspector shall issue the desired permit unless good cause shall appear why said permit should be denied; provided, if it is desirable to construct the sidewalk at a location, grade or elevation other than that regularly prescribed, the building inspector shall submit the application to the City Council, who shall determine whether the permit should be granted or denied. When a permit is issued for the construction of a sidewalk, the building inspector shall approve placement of stakes indicating the location, grade and elevation of the sidewalk. It shall be unlawful for any person to construct, or cause to be constructed, said sidewalk at any other location, grade or elevation than so designated. All sidewalks shall be built and constructed on the established grade or elevation, and if there is no established grade, then on the grade or elevation indicated by the city official in charge of sidewalks. (Ref. Neb. Rev. Stat. §16-250)

SECTION 6-206: MUNICIPAL CONSTRUCTION

The City Council may, by resolution, order the construction of a sidewalk on any lot or piece of ground within the City. Notice of the City Council's intention to construct said sidewalk shall be given by the city clerk by publication of notice one time in a legal newspaper of general circulation in the City.

A copy of said notice shall be personally served upon the occupant in possession of such property, or, when personal service is not possible, said notice shall be posted upon such premises 30 days prior to the commencement of construction. The notice required in this section shall be prepared by the city attorney in accordance with the provisions of this section. Such service shall include a form of return evidencing personal service or posting as herein required.

Said notice shall notify the owner of the premises of the passage of the resolution ordering him/her to construct or cause to be constructed a sidewalk within 30 days after the date of publication, and further, that if he/she fails to construct the sidewalk or cause the same to be done within the time allowed, the City will cause the sidewalk to be constructed and the cost thereof shall be levied and assessed as a special tax against the premises; provided, the notice shall contain the official estimate of the cost of said construction and no special assessment in excess of this estimate shall be assessed against the property. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send to the last known address of the nonresident property owner by means of certified mail,

return receipt requested, a copy of any notice required by law to be published. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published. (Ref. Neb. Rev. Stat. §16-250, 16-664, 16-666)

SECTION 6-207: CONSTRUCTION BIDS

Whenever the City shall construct, widen, replace or reconstruct any sidewalk, notice shall be prepared by the city clerk, specifying the work to be done and calling for bids for doing such work and supplying the necessary materials and labor. Such notice shall be published in at least one issue of a legal newspaper of general circulation in the City; provided, bids so invited shall be filed in the office of the city clerk within ten days after the date of publication. Bids shall be opened at the next regular or special meeting of the City Council and the City Council shall then award the work to the lowest responsible bidder.

SECTION 6-208 CONSTRUCTION STANDARDS AND SPECIFICATIONS

All sidewalks shall be constructed in conformity with such specifications as are adopted by the city engineer and approved by the City Council. The city engineer may reject the use of any materials that do not comply with such requirements and specifications or any materials that are lacking in quality, and it shall be unlawful to construct any sidewalks from any material so rejected. In case any lot owner within the City, under notice given or otherwise, shall construct a sidewalk in violation of this chapter, the building inspector, or Public Works Director or his/her designee, may stop the work of such construction and order the same to be constructed in accordance with this chapter and order the work already done to be changed. Upon the failure of such owner to change any such work, the Public Works Director or his/her designee may forthwith change said work and the expense of the same shall be assessed and taxed to said lot.

All sidewalks shall be a minimum of four feet from the curb lines; provided that a waiver of requirement of location of not less than four feet from curb line may be granted by the City Council upon application therefor and under conditions acceptable to the Council.

SECTION 6-209: DANGEROUS STAIRWAY OR OPEN GRATE

It shall be unlawful for any person to construct or maintain any stairway, cellarway, open basement, or open entrance thereto in or adjacent to any sidewalk, pavement or street; provided that all such existing conditions may be permitted to remain from and after the effective date of this Code if the person responsible therefor shall protect the public from harm by installation of an appropriate balustrade or coping, and shall furnish a bond as determined by the City Council for compensation to any person suffering injury or damage by reason of the existence of such open stairway, cellarway or basement. No sidewalk shall be con-

structed containing any opening or grates.

SECTION 6-210: TREE PLANTING

Any person may plant trees in the sidewalk space if application is first made to the City Council to do so. Applications shall be filed at the office of the city clerk upon forms supplied by the City requesting such information as the City Council may deem necessary to determine the propriety of granting a tree planting permit. Notwithstanding such permit to plant, the City shall retain the right to remove such tree or shrub when convenience or necessity demand such removal.

ARTICLE III - STREETS

SECTION 6-301: NAMES AND NUMBERS

All houses or buildings fronting on any of the public streets or alleys of the City shall be numbered as follows:

1. Each house or lot with frontage of 22 feet shall be entitled to receive a number.
2. The numbering shall be done in accordance with what is known as the Philadelphia system.
3. The numbers provided for in this section shall be at least three inches high in size, of good and substantial material and placed on the front of the house or building in a conspicuous place.
4. On all streets running east and west, the numbers shall commence at First Street as a base street.
5. On all streets running north and south, the numbers shall commence at Main Street as a base line.
6. The owner of each building shall place upon his/her house or building the proper number as provided in this section.

(Ref. Neb. Rev. Stat. §16-614)

SECTION 6-302: WIDENING OR OPENING

The City Council shall have the power to open, control, name, rename, extend, widen, narrow, vacate, grade or pave, install curbs and gutters, or otherwise improve and control any street, alley or lane within or without the limits of the City and keep the same in good repair and condition, in any manner it may deem proper. (Ref. Neb. Rev. Stat. §16-609)

SECTION 6-303 DRIVING STAKES

It shall be unlawful for any person to drive any peg or stake of any kind into the pavement in any street or alley without first procuring the written consent of the Public Works Director or his/her designee.

SECTION 6-304: MIXING CONCRETE

It shall be unlawful for any person to mix any concrete or plastering material directly on the street pavement for any reason whatsoever.

SECTION 6-305: HARMFUL LIQUIDS

It shall be unlawful for any person to place or permit to leak in the gutter of any street any waste gasoline, kerosene, or high lubricating oils, which damage or act as a solvent upon said streets.

SECTION 6-306: EAVE AND GUTTER SPOUTS

It is hereby declared unlawful for any person to erect or maintain any dwelling house or business building within the limits of the City where the said dwelling or building abuts on any sidewalk or street without providing proper guttering and eave spouts to receive the waste waters that collect on the said sidewalks and streets. All eave spouts erected on any dwelling house or business building shall be constructed to drain into the alleys or, where it is found to be impossible to drain any eave spout into the alley, it shall be buried beneath the sidewalk and drain into the street.

SECTION 6-307: HEAVY EQUIPMENT

It shall hereafter be unlawful for any person(s) to move or operate heavy equipment across any curb, gutter, bridge, culvert, sidewalk, crosswalk or crossing on any unpaved street without first having protected it with heavy plank sufficient in strength to warrant against breakage or damage. Hereafter, it shall be unlawful to run, drive, move, operate or convey over or across any paved street a vehicle, machine or implement with sharp discs or sharp wheels that bear upon said pavement with wheels having cutting edges; with wheels having lugs, protruding parts, or bolts thereon that extend beyond a plain tire so as to cut, mark, mar, indent, or otherwise injure or damage any pavement, gutter or curb; provided, where heavy vehicles, structures, and machines move along paved or unpaved streets the city police are hereby authorized and empowered to choose the route over which the moving of such vehicles, structures or machines will be permitted and allowed. Nothing in this section shall be construed to apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths ($5/16$) of an inch in diameter inclusive of the stud-casting with an average protrusion beyond the tread surface of not more than seven sixty-fourths ($7/64$) of an inch, between October 1st and April 15th; provided that school buses and emergency vehicles shall be permitted to use metal or metal-type studs all year; farm machinery with tires having protuberances which will not injure the streets shall be permissible; and tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to slide or skid shall also be permissible. (Ref. Neb. Rev. Stat. §60-6,250)

SECTION 6-308: CONSTRUCTION NOTICE

The city clerk shall notify the owners of real estate abutting a street, alley, or a part thereof which is to be put under contract for paving or repaving. Notice shall also be given to all gas, electric service and telephone companies and all consumers of gas, water and sewer services which will be discontinued during such construction. Said notice shall be published one time in a legal newspaper at least 20 days prior to the beginning of such construction by the party undertaking such construction; said notice shall state at what date connections must be made

and excavation completed. All gas, water, sewer and underground connections must be made prior to the paving or repaving of the street under construction. After expiration of such time, permits for excavation will not be issued, nor will excavation be allowed, until after the completion of the paving in said street or alley, and the formal final acceptance thereof by the proper officials of the City.

SECTION 6-309: PIPELINES AND WIRES

Poles, wires, gas mains, pipelines, and other appurtenances of public service companies shall be located or erected over, upon, or under the streets, alleys, and common grounds of the City, and shall be confined to the alleys whenever possible. All poles, wires, gas mains, pipelines or other appurtenances shall be reset, placed, or erected in such a manner that they will not interfere with the water system; sewerage system; poles, wires and mains of any public utility; adjacent buildings; or with travel on the public ways and property. Application for location of the above shall be made to the City Council in writing, and approval by that body shall be issued in writing. Any public service company granted a right-of-way for the erection and maintenance of poles, conduits, gas mains, pipelines and wires shall at all times erect and locate their poles, wires, gas mains, pipelines and other appurtenances at such places and in such manner as shall be designated by the City Council. Such poles, wires, gas mains, pipelines and other appurtenances shall be removed or relocated by said companies at their own expense when requested to do so by the City Council. Any such relocation shall be ordered by resolution of the City Council, and the city clerk shall notify any and all companies affected. Said companies shall, within 24 hours after receiving notice, at their own expense, cause the poles, wires, gas mains, pipelines or other appurtenances to be removed. The City Council shall designate another location as close as possible to their original location where said poles, wires, gas mains, pipe lines or other appurtenances may be reset or placed.

SECTION 6-310: CONSTRUCTION ASSESSMENT

To defray the costs and expenses of street improvements, as may be authorized by law, the City Council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, abutting upon, or especially benefiting from, the street, avenue, alley or sidewalk in whole or in part opened, widened, curbed, curbed and guttered, graded, paved, repaired, graveled, macadamized, parked, extended, constructed, or otherwise improved or repaired. The City Council, sitting as the Board of Equalization, shall review all such improvements in accordance with the procedure provided by law. All special assessments shall be made by the City Council at a regular or special meeting by resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements and the amount charged against same. The vote shall be recorded in the minutes. Notice of the time of such meeting and the purpose for which it is to be held shall be published in a legal newspaper published or of general circulation in the City at least four weeks be-

fore the same shall be held. In lieu of such aforementioned notice, personal service may be had upon the persons owning or occupying the property to be assessed. Such assessments shall be known as "special assessments for improvements" and, with the cost of notice, shall be levied and collected as a special tax in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes. Said assessments shall be certified to the county clerk by the city clerk forthwith after the date of levy for collection by the treasurer of said county unless otherwise specified. After it shall become delinquent, said assessment shall draw interest at the legal interest rate per annum. In the event the property owner is a nonresident of the county in which the property lies, the City shall, before levying any special assessment against that property, send a copy of any notice required by law to be published by means of certified mail, return receipt requested, to the last known address of the nonresident property owner. The last known address shall be that address listed on the current tax rolls at the time such required notice was first published.

SECTION 6-311: PETITION FOR IMPROVEMENTS

Owners of lots or land abutting upon any street, avenue or alley within the City representing 75% of the front footage thereon may petition the City Council to create an improvement district, so that such district when created will make up one continuous or extended thoroughfare or more without cost to the City. The City Council shall assess the entire cost of any such improvements on any such street, alley or avenue, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement districts. It shall be the duty of the City Council to create the proper improvement districts, which shall be consecutively numbered, and to improve the same and to proceed in the same manner and form as hereinbefore provided for in other paving and improvement districts; provided, the City Council shall have power to levy the entire cost of such improvements of any such street, avenue or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue street improvement bonds to pay for such improvements. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, including intersections of the same, and spaces opposite alleys. If the assessments hereinbefore provided for, or any part thereof, shall fail, or for any reason shall be invalid, the City Council shall make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as herein provided. The City Council shall have the discretion to deny the formation of the proposed district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the City Council should deny a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties. (Ref. Neb. Rev. Stat. §16-624)

SECTION 6-312: DEFERRAL FROM SPECIAL ASSESSMENTS

Whenever the City Council creates an improvement district as specified in Section 6-311 which includes land adjacent to the City which is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments. For purposes of this section, the terms "agricultural use" and "agricultural use zone" shall have the meaning specified in Neb. Rev. Stat. §77-1343.

Any owner of record title eligible for the deferral granted by this section shall, to secure such assessment, make application to the City Council within 90 days after creation of an improvement district as specified in Section 6-108. Any owner of record title who makes application for the deferral provided by this section shall notify the county register of deeds of such application in writing prior to approval by the City Council. The City Council shall approve the application of any owner of record title upon determination that the property (a) is within an agricultural use zone and is used exclusively for agricultural use, and (b) the owner has met the requirements of this section.

The deferral provided for in this section shall be terminated upon any of the following events:

1. Notification by the owner of record title to the City Council to remove such deferral;
2. Sale or transfer to a new owner who does not make a new application within 60 days of the sale or transfer, except as provided in subdivision 3 of this section;
3. Transfer by reason of death of a former owner to a new owner who does not make application within 125 days of the transfer;
4. The land is no longer being used as agricultural land; or
5. Change of zoning to other than an agricultural zone.

Whenever property which has received a deferral pursuant to this section becomes disqualified for such deferral, the owner of record title of such property shall pay to the City an amount equal to:

- A. The total amount of special assessments which would have been assessed against such property, to the extent of special benefits, had such deferral not been granted; and
- B. Interest upon the special assessments not paid each year at the rate of 6% from the dates at which such assessments would have been payable if no deferral had been granted.

In cases where the deferral provided by this section is terminated as a result of a sale or transfer described in subdivision 2 or 3 of this section, the lien for assessments and interest shall attach as of the day preceding such sale or transfer.

(Ref. Neb. Rev. Stat. §19-2428 through 19-2431)

SECTION 6-313: VACATING PUBLIC WAYS; DEFINITIONS AND ASCERTAINING DAMAGES

A. “Special damages” shall mean only those losses or damages or injuries which a property owner suffers that are peculiar or special or unique to his/her property, and which result from the City Council vacating such street, avenue, alley, lane or similar public ways.

Special damages shall not mean those losses or damages or injuries that a property owner suffers that are in common with the rest of the City or public at large, even though those losses or damages or injuries suffered by the property owner are greater in degree than the rest of the City or public at large.

B. The mayor shall appoint three or five or seven disinterested residents of the City to a special commission to ascertain the amount of special damages that the abutting property owners are entitled to receive and which resulted from the City Council vacating such street, avenue, alley, lane or similar public way. The appointees of the special commission shall be approved by the Council. Only special damages, as herein defined, shall be awarded to the abutting property owners.

C. In determining the amount of compensation to award the abutting property owners as special damages, the aforementioned commission shall use the following rule:

The abutting property owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the vacating of such street, avenue, alley, lane or similar public way. However, if no difference in value exists the abutting property owner is entitled to no compensation. (Ref. Neb. Rev. Stat. §16-904)

SECTION 6-314: VACATING PUBLIC WAYS; PROCEDURE

Whenever the City Council decides that it would be in the best interests of the City to vacate a street, avenue, alley, lane or similar public way, the City Council shall comply with the following procedure:

A. Notice. Notice shall be given to all abutting property owners either by First Class mail to their last known address or if there is no known address then by publishing the notice in a newspaper that is of general circulation in the City. The content of the notice will advise the abutting property owners that the City Council will consider vacating such street, avenue, alley, lane or similar public way at their next regular meeting or if a special meeting is scheduled for such discussion, then the date, time and place of such meeting.

B. Consent/Waiver. The City Council may have all the abutting property owners sign a form stating that they consent to the action being taken by the City Council and waive their right of access. The signing of such form has no effect on claims for special damages, as defined in Section 6-313, by the abutting property owners, but does create the presumption that the City Council's action was proper.

However, if all the abutting property owners do not sign the consent/waiver form, the City Council may still proceed with vacating such street, avenue, alley, lane or similar public way under the authority granted them by Neb. Rev. Stat. §16-611.

C. Ordinance. The City Council shall pass an ordinance that shall state essentially the following:

1. A declaration that the action is expedient for the public good or in the best interests of the City.

2. A statement that the City shall have an easement for maintaining all utilities.

3. A method or procedure for ascertaining special damages to abutting property owners.

D. Filing. The clerk shall file a copy of the ordinance with the county register of deeds to ensure that abutting property owners can gain title to their share of the vacated street, avenue, alley, lane or similar public way and so that such land will be drawn to the attention of the county assessor. (Ref. Neb. Rev. Stat. §16-611)

SECTION 6-315: INTERSECTION IMPROVEMENTS

The cost of improving the intersections of streets, avenues or the spaces opposite alleys shall be paid by the City. The City Council is hereby authorized to assess such improvements, issue improvement bonds, and levy a special tax on all of the taxable property in the City in the manner provided by law for the payment thereof. All improvements to any streets, avenues or alleys within the City for which a special tax shall be levied shall be done by contract with the lowest responsible bidder to be determined by the City Council.

SECTION 6-316: IMPROVEMENTS; ACCEPTANCE BY CITY ENGINEER

When any improvement is completed according to contract, it shall be the duty of the city engineer to inspect the same and if the improvement is found to be properly done, he/she shall accept the same and report his/her acceptance to the mayor, who shall report the improvement to be approved or disapproved. The City Council may confirm or reject such acceptance. When the ordinance levying

the special assessment tax makes the same due as the improvement is completed, the city engineer may accept the same in sections from time to time, if they are found to be finished according to the contract.

SECTION 6-317 CUTTING PAVING, CURB OR SIDEWALK

It shall be unlawful for any person to cut into any paving, curb or sidewalk for the purpose of constructing a driveway or any other purpose whatsoever without first having obtained a written permit from the city building inspector, or the Public Works Director or his/her designee. The application for such permit shall contain the following information:

1. The addition, block and lot which the improvement is to serve.
2. The location of the proposed improvement with reference to adjacent lot lines.
3. The width of the improvement and type of surface which the improvement will connect.

Upon the application being filed, it shall be the duty of the Public Works Director or his/her designee to inspect the place of entry into the paving, sidewalk or curb, and approve such application on such terms and conditions, including starting and completion dates, as he/she determines necessary. When cutting into any paving, it shall be the duty of the party to cut the paving under such rules and regulations as may be prescribed by the street and property maintenance superintendent. When the applicant is ready to close the opening made, he/she shall inform the Public Works Director or his/her designee, who shall supervise and inspect the materials used and the work done in closing the opening. It shall be discretionary with the City Council, to order the Public Works Director or his/her designee to do the work of cutting and closing the paving and charge the costs thereof to the party who obtained such permit. Before any permit is issued, the applicant for such permit shall deposit with the city treasurer a sum set by resolution of the City Council for all paving, curb or sidewalk to be cut. Such sum shall be set on a per square foot cost of construction basis. The deposit shall be retained by the City for the purpose of replacing the paving, curb or sidewalk, in the event the work is done by the City. In the event the City elects to require the applicant to replace the paving, curb or sidewalk, the deposit shall be retained by the City until the work is completed to the satisfaction of the Public Works Director or his/her designee. In lieu of making the deposit above set forth, the applicant may, before any permit is issued, execute a bond to the City with a good and sufficient surety or sureties to be approved by the City Council, for the total cost of the improvement.

In the event that the work has not been completed by the completion date as set forth on the approved application the City may cancel the permit, if work has not

commenced, complete the work and retain a sufficient sum of the deposit to reimburse the City for such completion work or serve notice on the applicant's bonding company of such failure to complete the work and if necessary file legal action on applicant's bond.

SECTION 6-318: PROTECTION OF PAVING

No person shall remove, destroy or tear down any barricade, fence, railing or other device erected or constructed for the purpose of protecting paving or any other work while in the course of construction or after it has been constructed on any of the streets, alleys or public grounds of the City. No person shall drive over or upon or go upon any paving or other public work in any of the streets, alleys or public grounds of the City while the same is protected by any barrier, fence or railing, or until such barrier, fence or railing has been removed by the contractors in charge of such work, or by the duly authorized officials of the City.

SECTION 6-319: UNAUTHORIZED REMOVAL OF MARKERS

It shall be unlawful for any person to break, remove or destroy any stone, stake, landmark or other marker on any street, block, lot or public ground except by proper authority.

SECTION 6-320: UNLAWFUL ACCUMULATION OF DIRT OR OTHER MATERIAL

It shall be unlawful for any person to allow the accumulation of any dirt or other material upon the city streets.

SECTION 6-321: WASHING VEHICLES ON STREETS

It shall be unlawful for any person to wash any automobile or other vehicle on any paved street or alley in the City.

SECTION 6-322 EXCAVATION AND BACKFILL; SUPERVISION OF CITY OFFICIALS

All practices within the scope of Sections 6-322 through 6-327 in respect to street right-of-way, including pavement of sidewalks within the street right-of-way, shall be under the control and supervision of the Public Works Director or his/her designee.

All practices within the scope of the above-named sections in respect to private property or non-street right-of-way shall be under the control and supervision of the building inspector. (Ref. Neb. Rev. Stat. §16-232, 16-308)

SECTION 6-323: EXCAVATION AND BACKFILL; COMPLIANCE

The responsibilities for compliance with the requirements of these sections shall rest with the owners of property with respect to private owned property, and shall rest with the primary contractor or the sub-department of the City in respect to publicly owned or right-of-way property, and in each case the delegation of responsibility to the contractor(s), whether primary or sub-contractors, shall not operate to relieve the primary responsibility as herein established.

SECTION 6-324: EXCAVATION AND BACKFILL; BOND

All work done in the street right-of-way or upon city property shall not be done until a bond for completion of work and a certificate showing adequate public liability insurance are filed with the city clerk under rules to be established from time to time by resolution of the City Council.

SECTION 6-325 EXCAVATION AND BACKFILL; SAFETY REQUIREMENTS

Proper barricades and warning lights shall be erected and installed at any open ditch or other obstruction to the normal use of the street or on private property where a hazard exists, and such barricades and warning lights shall comply with rules established by the Public Works Director or his/her designee or the building inspector.

SECTION 6-326 EXCAVATION AND BACKFILL; TIME LIMITATIONS

Paving cuts or open ditches in streets or on private property shall not be permitted to remain open longer than is necessary for the completion of the work. Rules as to the time reasonably necessary shall be established by the Public Works Director or his/her designee and the building inspector, respectively, and extension of time beyond those established in such rules shall not be permitted without the written permission of the Public Works Director or his/her designee or building inspector, as the case may be, and then only for good cause shown.

SECTION 6-327 EXCAVATION AND BACKFILL; PERMIT APPLICATION, REQUIREMENTS

Any party desiring to make an excavation on public property shall first make application for a permit to do so with the street and property maintenance superintendent. Such application shall contain such information deemed necessary by the Public Works Director or his/her designee and shall be issued on such terms and conditions as set forth in writing by the Public Works Director or his/her designee. No application shall be accepted until the requirements of Section 6-324 have been complied with.

Excavation and backfill requirements shall be established by the Public Works Director or his/her designee. Each applicant shall acknowledge, in writing, re-

ceipt of the requirements as established by the Public Works Director or his/her designee. Any permit holder who violates any of the written requirements issued with the permit shall be deemed guilty of a misdemeanor and fined in a sum not to exceed \$500.00 per day. Each day's violation shall be deemed to be a separate offense.

ARTICLE IV - PENAL PROVISIONS

SECTION 6-401: VIOLATION; PENALTY

Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this chapter set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500.00 for each offense. A new violation shall be deemed to have been committed every 24 hours of such failure to comply.